IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.K.MOHANAN

MONDAY, THE 12TH NOVEMBER 2007 / 21ST KARTHIKA 1929

Crl.MC.No. 3163 of 2004 - A

(MC.74/1998 of CHIEF JUDICIAL MAGISTRATE COURT, PALAKKAD
Crl.RP.39/2002 of I ADDL. SESSIONS COURT, PALAKKAD)

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PETITIONER/REVISION PETITIONER/COUNTER PETITIONER:

S.MOHAMMED RAFI, S/O.E.S.SULAIMAN,
NEAR R.V.K.SCHOOL, EDAYAR, PALAYAM,
PIRIVU (74/B, KUNIYAMPUTHUR),
COIMBATORE.

BY ADV. SRI.JACOB SEBASTIAN

RESPONDENTS/RESPONDENTS/PETITIONERS:

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1. KHAIRUNNISSA, D/O.KHADER MOIDEEN,
H.NO.9/445, POODOR, KONDUMTHIRAPULLY,
PIRAYAIRI AMSOM, PALAKKAD.

2. JENSINA, AGED 6,
D/O.KAIRUNNISA, DO.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 12/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V.K.MOHANAN, J.

Crl.M.C.No. 3163 of 2004 - A

Dated this the 12th day of November, 2007

O R D E R

The petitioner herein is the revision petitioner in Crl.R.P.No.39 of 2002 of the Ist Additional Sessions Court, Palakkad and the counter petitioner in M.C.No.74 of 1998 of the Chief Judicial Magistrate's Court, Palakkad. The respondents herein are the wife and daughter of the petitioner. The petitioner has filed this Crl.M.C. challenging the concurrent finding and the order passed by the trial court as well as the revision court, by which the petitioner was directed to pay maintenance to the respondents. The facts and circumstances which led to filing of this Crl.M.C. are as follows:-

The marriage between the petitioner and the first respondent had taken place on 8.10.1995 as per the muslim religious rites. A girl child was born in their wedlock. The specific case of the wife, the first respondent herein is that before their marriage, the petitioner herein made the father of the first respondent to

believe that he had already divorced his first wife and thereafter, the marriage was solemnised and during the time when they lived together, the first respondent was being harassed by the petitioner.

2. M.C.No.74 of 1998 was filed raising various allegations against the petitioner herein, and claiming maintenance and finally by order dated 17.1.2002, the Chief Judicial Magistrate, Palakkad allowed the claim petition and the petitioner herein was directed to pay maintenance to the respondents herein, namely, the wife and daughter at the rate of Rs.500/- each per month from the date of petition, ie., from 7.10.1998 onwards. In the said order, it was made clear that the interim maintenance already paid to the respondents herein would be deducted from the maintenance amount till the date of order of the trial court.

3. Challenging the above order, the petitioner herein preferred a criminal revision petition as Crl.R.P.No.39 of 2002 before the Sessions Court, Palakkad Division. Since the legal status of the parties

to the proceedings is admitted and the main dispute is with respect to the income of the revision petitioner, the Sessions Court, after considering the income of the petitioner herein and the cost of living, came to the conclusion that there was no patent irregularity, illegality or defect so as to exercise his revisional jurisdiction in favour of the petitioner herein and accordingly, the above revision petition was dismissed.

4. I have heard the learned counsel for the petitioner. Though notice was served on the respondents, they did not choose to appear before this Court or to make arrangement to defend this petition.

5. Learned counsel appearing for the petitioner strenuously argued that the respondents herein are residing separately without any reason and the petitioner herein was very well prepared to accommodate them provided they are ready to reside along with the petitioner. The counsel also submits that the rate fixed by the courts below is excessive and not in proportionate with the earnings of the petitioner.

According to the counsel, since the respondents herein refused to accept the offer made by the husband/petitioner herein, the respondents are not entitled to get the maintenance and therefore, the orders under challenge are liable to be set aside.

6. I have gone through the materials and evidence on record. The concurrent finding and the orders passed by the court below are perused carefully. The fact regarding the matrimonial relationship between the husband/the petitioner herein who is the counter petitioner and the first respondent herein who is the first petitioner in the trial court is not disputed. Similarly, it is admitted by both the parties that the second respondent herein was born in their wedlock. Now the questions, as rightly enquired into by the trial court, are whether the separate residence of the first respondent is justified and whether there is sufficient reason for the same. The specific case of the wife- the respondent herein is that the husband, before the marriage, told the father of the first respondent that he

had divorced his first wife. Now, as per the available evidence, it is clear that the petitioner herein is residing along with his first wife and children. It is the case of the first respondent that after the marriage, during her stay along with the petitioner herein in the matrimonial house, she was harassed by the petitioner herein as well as other members of the family which consists of ten in number and the first respondent was forced to work through out the day and night. It is, because of the ill-treatment meted out by the first respondent, that she had left the matrimonial home and was residing in her parental house. It is also the case of the first respondent/wife that the petitioner herein who is the husband is not paying any amount for maintenance of the first and second respondents. The trial court, on the basis of the materials available and evidence on record, came to the conclusion that the petitioner herein has got sufficient means to maintain the claimants namely, his wife and daughter. I find no reason to interfere with the findings of the courts below regarding the monetary

capacity of the petitioner to maintain the claimants.

7. The other contention raised by counsel for the petitioner is that she is residing according to her own will and without any reason and he is prepared to take back her if she is prepared to reside along with the petitioner. The trial court, under issue Nos.(i) to (iii), after evaluating the evidence on record came to a specific finding that the offer of the petitioner is not a genuine one. There is no material to show the bona fides of the offer made by the petitioner. The offer was made only after initiating the proceedings under Section 125 of the Code of Criminal Procedure and before that there was no offer and therefore, it is to be concluded that the said offer is made without any bona fide and raised only for the purpose to defeat the claim of the wife, the first respondent. It is also on record that the petitioner herein is now residing along with his first wife and children. The first respondent herein in her petition and during her evidence categorically pleaded and established that before the marriage between the

petitioner and the first respondent herein, her father was told by the petitioner that he had divorced his first wife. Now, as pointed out earlier, he is residing along with his first wife and children and therefore, it cannot be said that the first respondent herein is residing away from the petitioner without any reason. Therefore, it is to be concluded that the offer made by the petitioner is without any bona fides and there is sufficient cause for the first respondent to reside separately.

8. Since the marriage is admitted and there is no dispute regarding the paternity of the second respondent, the petitioner is bound to maintain the claims and to pay maintenance to his wife and daughter.

9. As I stated earlier, the trial court as well as the revisional court came into a specific finding that the petitioner has got sufficient income to maintain the claims and the court below ordered only Rs.500/- each to the claimants per month. Considering the needy circumstances and living standard of the present day, it cannot be said that the amount fixed by the court below

is exorbitant or illegal or arbtrary and no interference is warranted in exercise of powers of this Court under Section 482 with respect to the quantum fixed by the court below regarding the maintenance.

In the result, the Crl.M.C. is devoid of merit and is dismissed.

V.K.MOHANAN,
Judge

Mbs/

V.K.MOHANAN, J.

O.P.NO. OF 2001

J U D G M E N T

DATED: -0-2007